



# Planning & Development Services

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## Memorandum

To: **Planning Commission**

From: **Stacie Pratschner, AICP, Senior Planner/Team Supervisor**  
**Ryan Walters, Assistant Director**

Date: **June 14, 2017**

Re: **PC Workshop on Proposed Code Amendments: Land Disturbance, Forest Practices, and the Rural Forestry Initiative**

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### SUMMARY:

Planning and Development Services (PDS) is providing this memo in advance of the June 20, 2017 Planning Commission meeting. The purpose of this memo is to present a work program and draft schedule for adoption of a new land disturbance chapter, discuss the assumption of regulatory authority from the Department of Natural Resources (DNR) for Class IV Forest Practices, describe the status of the Rural Forestry Initiative and identify other proposed edits to Title 14 for consistency.

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### ACTION REQUESTED OF THE PLANNING COMMISSION:

This is an informational workshop and staff requests conceptual feedback from the Planning Commission concerning the attached code drafts.

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### BACKGROUND / DISCUSSION:

The Department's proposal includes the following three parts:

- Assumption of jurisdiction from DNR over forest practice conversions;
- Land disturbance (clearing) regulations; and
- Adjustment to the critical areas review of CaRD open space tracts to be kept in ongoing forestry (which has been referred to as the "Rural Forestry Initiative").

## Assumption of Jurisdiction

Pursuant to the planning goals outlined in the Growth Management Act, cities and counties subject to planning under RCW 36.70A.040 are required to adopt development regulations that establish appropriate approvals for all phases of the conversion of forest lands, including clearing and grading (RCW 36.70A.570).

The Forest Practices Act (RCW 76.09.240) and Policy 4B-7.2 of the Skagit County Comprehensive Plan mandate the County to assume jurisdictional authority from the DNR over the administration and enforcement of Class IV-General (G) forest practices as defined by the WAC 222-16-050. Class IV-G forest practices are those conversions of land to a non-forestry use, including residential and commercial uses.

Staff had previously provided the Planning Commission with a synopsis of State laws regarding forest practices and the regulations that must be in place in the County's code for the DNR to accept a transfer of jurisdiction of Class IV-G forest practices ([www.skagitcounty.net/rfi](http://www.skagitcounty.net/rfi)). Appendix A of the report described the responsibility of the Local Government Entity (LGE, i.e. Skagit County) to have ordinances in place for reviewing and approving clearing and grading activities, collecting and administering forest practices permit and recording fees, reporting permit information to the Department of Revenue, and having enforcement procedures in place if violations take place. The provisions of GMA require that the County must also ensure that environmental protection is addressed for the safeguard of critical areas, water quality, riparian functions and the public welfare. The DNR and the Department of Ecology will conduct a review of a completed *Worksheet for Transfer of Jurisdiction* in concurrence with the draft code, a completed SEPA checklist, and threshold determination to facilitate the transfer of jurisdiction.

## Land Disturbance Regulations

In order to comply with the Forest Practices Act and implement the goals of the Comprehensive Plan, the County proposes a new SCC Chapter 14.22, named "Land Disturbance and Forest Practices". This new chapter will provide a permit pathway for a variety of stand-alone clearing and grading activities and will harmonize the requirements for stormwater management, forest practices, protection of critical areas, cultural resource management, and SEPA when land disturbing activities are conducted. Clearing and grading activities associated with an approved building permit, preliminary subdivision, preliminary short subdivision, or shoreline permit will not require a separate land disturbance permit.

The attached code edits (**Attachment 1**) are the framework for development of code to permit a suite of clearing and grading activities. Proposed SCC chapter 14.22 includes statements of purpose and applicability, lists a number of activities that will be exempt from a permit requirement, provides staff the authority to require site inspections and performance bonds, and delineates DNR versus County jurisdiction for all classes of forest practices.

The Building Official currently processes Grading Permit Applications pursuant to the requirements in Appendix J of the International Building Code (IBC). Staff proposes a new Level I permit application per SCC 14.06.110 that will be reviewed by the Planning Department for consistency with Title 14 and the IBC. Planning staff will coordinate land disturbance application reviews with the Building Official and Public Works Department for work requiring engineering approval or

activities proposed in the County right-of-way. The proposed Level I permit application will fulfill the goal of harmonizing the requirements of Title 14 with applicable engineering standards, the IBC, SEPA, and forest practices.

## Rural Forestry Initiative

**Background.** In 2007, the Skagit County Forest Advisory Board (FAB) proposed the Rural Forestry Initiative (RFI) to PDS (**Attachment 2**). The RFI was a request for a code amendment that would permit a forest land owner applying for a CaRD subdivision pursuant to SCC 14.18.320 and .330 to limit the currently adopted County wetland and wildlife habitat regulations to the lots being developed with homes, roads, utilities, stormwater infrastructure and other required public and private improvements. The FAB proposal is based on the concept that the creation of the Open Space Forestry (Os-F) tract pursuant to the subdivision application does not meet the definition of either a Class IV-G forest practices conversion or development, and could therefore be exempt from County wetlands and wildlife habitat review. This wetland and wildlife habitat review of the Os-F tract would be pursuant to DNR's forest practice rules if and when the tract was the subject of a Class I, II or III forest practices application. The creation of an Os-F tract would still be subject to other portions of Title 14 and engineering design and development standards at the time of the subdivision permit application, including the classification and designation of any geologically hazardous and aquifer recharge areas, the installation of frontage improvements adjacent to the ROW, or the construction of a stormwater facility. The purpose of the RFI is to permit clustered residential development on forest lands per Policy 4B-2.7 of the Skagit County Comprehensive Plan while mitigating the cost of providing a wetland delineation on the Os-NRL tract.

In 2008, the Board of County Commissioners (BOCC) directed staff to include the RFI on the 2009 Comprehensive Plan Docket. Staff worked to draft code, establish a Memorandum of Understanding with the DNR to facilitate their acceptance of jurisdiction over the open space tract, and reached out to various stakeholders in the community concerning the FAB's proposal. In 2009 the Skagit River System Cooperative (SRSC) submitted a letter to Skagit County concerning the RFI, citing concerns that the WAC's standards for riparian management for small forest landowners did not provide adequate buffers around fish-bearing streams, and also stating that the application for a subdivision permit is itself an act of forest conversion and therefore the open space tract was subject to County regulations (**Attachment 3**). The Forest Advisory Board (FAB) submitted letters to the Planning Commission, stating that County critical areas review was a deterrent for prospective forest managers and that the creation of a natural resources tract pursuant to a subdivision application is not an act of forest conversion or development (**Attachment 4**). The draft MOU was not executed and code was not adopted per recommendation from the Planning Director to table the RFI and allow conversations to continue between SRSC and the FAB concerning the definition of conversion and the County's regulatory authority. Work on the RFI ceased for approximately six years.

In 2015, the BOCC directed staff to continue work on the RFI in concurrence with State-mandated code amendments for clearing, grading, and forest practices. All three proposals are being presented together because the County's assumption of regulatory authority over Class IV forest practices forces the question of local versus State jurisdiction in the case of a CaRD. Is a property that is subject to a local land use development permit approval (i.e. the subdivision application) and which will create an open space tract where the only activity will be DNR-regulated forest practices subject to County wetland regulations or DNR wetland regulations? Staff and the DNR had

correspondence concerning this question in 2016, with the DNR stating that the determination of whether property is forestland and eligible for an FPA may be compromised by the property's proximity to adjacent residences and agricultural land (**Attachment 5**). Staff presented a briefing to the Planning Commission concerning the RFI in January 2017.

**Proposal.** The attached edits to SCC Chapters 14.18 and 14.24 propose an approach that acknowledges the County's jurisdiction over land division while also providing flexibility in the administration of the critical areas on an open space tract created expressly for the purpose of non-conversion forest practices. Staff proposes limited application of critical areas review to requests for an open space tract pursuant in zoning districts that permit a CaRD subdivision. The creation of a tract for the purpose of continuing commercial forestry, labeled as an Open Space Forestry (Os-F) tract, would be permitted by the County pursuant to a DNR and County-approved Forest Management Plan (FMP).

Requiring approval of the FMP prior to final plat or short plat approval accomplishes the objectives of the property owner, the DNR and Skagit County. The plan assists the landowner in meeting their individual ownership objectives for the forestry portion of their property by protecting, improving or restoring the health and productivity of their timber resources. The FMP is the nexus by which the County is able to permit the creation of the Os-F tract; the review and approval by DNR means that the tract is indeed forest land and will be eligible for future forest management. The FMP process includes identification of any critical areas, cultural resources and priority habitat species pursuant to the local land use decision-making process. This proposed approach to the RFI code is consistent with a number of adopted development regulations and policies and goals of the Comprehensive Plan:

#### Natural Resource Lands Element

- **Goal 4B-2:** Support the Forest Advisory Board and establish other support programs for the purpose of promoting a viable forest land base and healthy forest products industry.
- **Policy 4B-3.1:** Implement management measures that retain commercial forestry activities in designated forest resource lands.
- **Policy 4B-4.1:** Develop a Forestry Incentive Options Program that considers the loss of forest land base due to habitat conservation areas.
- **Policy 10.10:** Usual and accustomed activities on natural resources lands shall be protected from interference when they are conducted in accordance with best management practices and environmental laws.

#### Environment Element

- **Goal 5A-1:** In cooperation with local, state, federal, and tribal agencies and jurisdictions, Skagit County shall identify, classify, designate, and map critical areas to protect and conserve them.
- **Policy 5A-1.1:** Critical areas shall be identified based on the best available science.

- **Policy 10.1:** Natural resource lands, including...critical areas shall be classified and designated, and regulations adopted to assure their long term conservation.
- **Policy 10.2:** Land use decisions shall take into account the immediate and long range cumulative effects of proposed uses on the environment, both on and off-site.

NEXT STEPS:

Other needed changes may be revealed as staff completes the initial research and review process for the code amendments. Staff is proposing an approximately five month process to review the code and draft revisions for the Planning Commission and the Board of County Commissioners to consider. Other tasks included in the scope of the project include SEPA notification and actions, various staff reports and briefings to the Planning Commission and Board of County Commissioners, WA Department of Commerce 60-day review, coordination with the Department of Natural Resources on forest practices, review by legal counsel, public notification, and public hearings as needed.

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APPLICABLE COUNTY POLICIES: Chapters 14.04, 14.06, 14.18, and 14.24 of Skagit County Code and The Natural Resource Lands and Environment Elements of the Skagit County Comprehensive Plan, available at [www.skagitcounty.net/comprehensiveplan](http://www.skagitcounty.net/comprehensiveplan).

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BUDGET IMPACT: There is no budget impact with this proposal.

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Attachments:

1. DISCUSSION DRAFT of Proposed Title 14 edits: Land Disturbance and Forest Practices
2. Rural Forestry Initiative request from the Forest Advisory Board (FAB), dated October 25, 2007
3. Letter concerning the RFI from the Skagit River System Cooperative (SRSC), dated June 24, 2009
4. Letters concerning the RFI from the Forest Advisory Board (FAB), dated June 29 and 30, 2009
5. Email correspondence between staff and the DNR, dated August 3, 2016

## Attachment 1

### **DISCUSSION DRAFT 6/14/2017 Proposed Development Regulations**

Plain text = existing code with no changes
<del>Strikethrough</del> = existing code to be deleted
<u>Underlined</u> = new code to be added
<del>Double Strikethrough</del> = existing code moved to another location
<u>Double Underline</u> = existing code moved from another location
<i>Italics</i> = instructions to code reviser
[Bracketed] = options for public comment

#### **Chapter 14.04 Definitions**

Land disturbing activity: any activity that results in a change in the existing soil cover (both vegetative and nonvegetative) and/or the existing soil topography. Land disturbing activities include, but are not limited to, clearing, grading, filling and excavation. Compaction that is associated with stabilization of structures and road construction shall also be considered land disturbing activity. Vegetation maintenance practices, including landscape maintenance and gardening, are not considered land disturbing activity. Stormwater facility maintenance is not considered land disturbing activity if conducted according to established standards and procedures.

#### **Chapter 14.06 Permit Procedures**

##### **14.06.050 Application level.**

- (1) Applications for development permits and other administrative determinations shall be categorized as one of four levels as follows; provided, that shoreline applications shall be processed as described in the Skagit County Shoreline Management Master Program:
  - (a) Level I. Level I applications are those applications for which a final decision is made by the applicable Administrative Staff, either the Director of Public Works or his/her designee, or the Director of Planning and Development Services or his/her designee, without a public hearing. That decision may then be appealed in an open record appeal hearing to the Hearing Examiner. The Hearing Examiner decision may then be appealed in a closed record appeal to the Board. Actions reviewable as Level I applications include:
    - (i) – (xiii) *No change*.
    - (xiv) Forest Practice Act waivers for single-family residential development.
    - (xv) [Land disturbance permits per SCC 14.22.040.](#)
    - (xvi) [Request for waiver of a 6-year Development Moratorium per SCC 14.22.080.](#)
    - ~~(xv)~~(xvii) [Administrative orders and civil penalties issued pursuant to SCC Chapter 14.44.](#)

~~(xvii)~~(xviii) Preliminary subdivision approval extensions pursuant to SCC 14.18.100(6)(e).

~~(xviii)~~(xix) Development permit application denials pursuant to SCC 14.06.105.

(b) – (d) *No change.*

## Chapter 14.18 Land Divisions

### 14.18.310 General approval provisions – CaRD.

- (1) The application shall meet the requirements of the underlying land division permit and those outlined in this Section.
- (2) Allowable Density. The maximum residential gross densities shall not exceed those set forth in the following lot size table. The maximum density as allowed for by the Comprehensive Plan may not necessarily be granted if a density limitation is necessary to meet septic and/or water system requirements. There shall be no density bonus for CaRD developments in areas designated as a “sole source aquifer,” except where the source of water is from a public water system whose source is outside the designated area or from an approved alternative water system pursuant to Chapter 12.48 SCC. Applications for such systems are processed pursuant to the regulations outlined in Chapter 12.48 SCC. Applications for CaRDs requesting an alternative system to obtain a density bonus shall be processed as a Level II application. Hearing Examiner criteria for review of an alternative system shall ensure that the system has no adverse impacts to the sole source aquifer. For CaRD density bonus developments in flow-sensitive basins refer to SCC 14.24.350.

Zone	Maximum Residential Densities with a CaRD*	Open Space Options
Rural Intermediate	1/2.5 acres or 1 per 1/256 of a section	All, where appropriate
Rural Village Residential	1/1 acre or 1 per 1/640 of a section with public water and septic or 1/2.5 acres or 1/256 of a section with private water and septic	All, where appropriate
Rural Reserve	2/10 acres or 2 per 1/64 of a section	All, where appropriate
Agricultural—Natural Resource Lands	1/40 acres or 1 per 1/16 of a section	Os-PA, Os-NRL Os-RSV (per Subsection (6))
Industrial—Natural Resource Lands	1/80 acres or 1 per 1/8 of a section	Os-PA, Os-NRL Os-RSV (per Subsection (6)), <a href="#">Os-F</a>
Secondary Forest—Natural Resource Lands	1/20 acres or 1 per 1/32 of a section	Os-PA, Os-NRL Os-RSV (per Subsection (6)), <a href="#">Os-F</a>

Rural Resource—Natural Resource Lands	4/40 acres or 4 per 1/16 of a section	Os-PA, Os-NRL Os-RSV (per Subsection (6)), <a href="#">Os-F</a>
Hamilton Residential	4/40 acres or 4 per 1/16 of a section	Os-PA, Os-UR, Os-RO, Os-RSV
Hamilton Urban Reserve	4/40 acres or 4 per 1/16 of a section  *Exception: Maximum residential densities for lands in or within one-quarter mile of a designated Mineral Resource Overlay (MRO) shall be no greater than 1/10 acres; provided, that if the underlying land use designation density of land within one-quarter mile of MRO lands is greater than 1/10 acres, the development rights associated with that density may be transferred to and clustered on that portion of the property located outside of one-quarter mile for the MRO lands, consistent with the CaRD policies in the Comprehensive Plan.	Os-PA, Os-UR, Os-RO, Os-RSV

- (3) Open Space Required. CaRDs shall provide open space. All lands within a CaRD shall be open space in accordance with Subsection (5) of this Section, except for the following:
- (a) Building lots (i.e., lots which do not contain open space);
  - (b) The development envelope of a lot containing open space; or
  - (c) Development envelopes when a binding site plan is utilized.
- (4) Open space shall either be located in:
- (a) One separate tract within the CaRD, retained in its entirety for open space; or
  - (b) A dedicated open space area on one of the lots in the CaRD. This lot shall have a building envelope, where a house and accessory structures may be located, which is no larger than the maximum lot size allowed by Subsection (7) of this Section.
- (5) Designation, Allowed Uses, and Preservation of Open Space. Open space within a CaRD shall be designated per the following 6 categories, based on the zoning designation and characteristics of the site. Accessory structures to the primary use of each open space designation are allowable if allowed by the underlying zoning. CaRDs may contain more than 1 type of open space; provided that all open space shall be within 1 tract or lot.
- (a) Open Space – Protection Areas (Os-PA). The purpose of this designation is to set areas of open space in a protective easement in order to protect critical areas without the expense of a detailed site assessment, historic sites and view sheds. All lands which have not received a site assessment pursuant to Chapter 14.24 SCC, Critical Areas Ordinance, shall be placed in this category [or Os-F](#). If in the future a critical area site assessment is performed and the critical areas have been delineated (see SCC 14.24.080), then the Os-PA parcel may be changed to another open space designation based on the criteria set forth in this Section with the critical areas identified as



protected critical areas (PCAs). [The Os-PA tract may be changed to an Os-F designation through a plat alteration.](#) Amendments to the plat map and recorded easement shall be required. A revised plat map for this purpose will not be considered a plat amendment. Nonresidential historic sites and their landscape setting shall also be placed in this category. Historic sites used as residences may be located inside or outside of this open space. All open space designated Os-PA shall be preserved pursuant to SCC 14.24.080 and 14.24.090 until such time as a different open space designation is requested and Chapter 14.24 SCC is satisfied. Uses and preservation of the Os-PA shall occur as follows:

- (i) Critical Areas. Follow the parameters set forth in Chapter 14.24 SCC for conservation and maintenance.
  - (ii) Historic Sites. A use covenant with covenants, conditions and restrictions (CC&Rs) shall be determined through the CaRD review process and noted on the face of the plat. The duration of the covenant shall be noted on the plat.
- (b) Open Space Natural Resource Lands (Os-NRL). The purpose of this open space is to preserve the natural resource lands within the County by clustering development and leaving the remainder open for resource production. The open space within CaRDs zoned Ag-NRL, IF-NRL, SF-NRL, or RRc-NRL shall be placed in this category, unless designated [Os-F](#) or Os-PA, subject to the provisions of Chapter 14.24 SCC, the Critical Areas Ordinance. All open space designated Os-NRL shall be placed in a natural resource lands easement (NRLE), which restricts the grantor and its heirs, successors and assigns from exercising rights to use and subdivide the land for any and all residential, recreational, commercial, and industrial purposes and activities which are not incidental to the purpose of the NRLE until such time that the land no longer has long-term commercial significance for the production of food, agriculture products, timber or extraction of minerals. Property is restricted to natural resource production as defined in the NRLE; provided, that it may be used for those uses outlined in the underlying zone (except for a dwelling unit). In the case of Agriculture and Industrial Forest lands, restrictions defined in the NRLE may only be extinguished upon a declaration in a court of competent jurisdiction finding that it is no longer possible to commercially use the property for the production of food, agriculture products, timber, or extraction of minerals.
- (c) Open Space Urban Reserve (Os-UR). *No change.*
- (d) Open Space Rural Open (Os-RO). *No change.*
- (e) Open Space Recreational/Amenities (Os-RA). *No change.*
- (f) Open Space Reserve (Os-RSV). *No change.*
- [\(g\) Open Space Forestry \(Os-F\).](#)
- [\(i\) The purpose of this open space designation is to preserve lands for ongoing forestry.](#)
  - [\(ii\) To be designated as Os-F:](#)
    - [\(A\) the applicant must submit either a letter from DNR that indicates the land is suitable for forest practices, or a Forest Management Plan reviewed and accepted by DNR per WAC 222-16-060;](#)

- (B) the Os-F tract must be at least 20 contiguous acres;
- (C) the Os-F tract must be enrolled in the Current Use taxation program for forestry per RCW 84.33 or 84.34 prior to final plat approval.
- (iii) Critical areas review of the area to be designated Os-F is not required at the time of land division or designation.
- (iv) No uses over which the County has jurisdiction are allowed within the Os-F tract.
- (v) The designation as Open Space-Forestry and the restrictions on uses must be shown on the face of the plat.

**Commented [RW1]:** Excludes forest practices that are under DNR jurisdiction.

(6) – (9) *No change.*

#### **14.24.110 County regulation of forest practices for the protection of critical areas.**

*Repealed.*

**Commented [RW3]:** Mostly recodified into SCC 14.22.080.

### **New Chapter 14.22 Land Disturbance and Forest Practices**

#### **14.22.010 Purpose and Intent.**

- (1) The purposes of this chapter are to:
  - (a) regulate land disturbing activity as defined by this Title;
  - (b) harmonize the requirements for stormwater management, forest practices, protection of critical areas, shorelines and cultural resources, compliance with the currently adopted IBC, and consistency with SEPA when land disturbance activities are conducted;
  - (c) assume regulatory authority from the Washington Department of Natural Resources over certain forest practices as required by RCW 76.09.240;
  - (d) ensure that forest practices over which the County has jurisdiction occur in compliance with the Skagit County Comprehensive Plan, the Skagit County Shoreline Master Program, and the regulations of this Title.
- (2) The intent of this chapter is to safeguard public health, safety, and welfare by requiring the following elements when land disturbing activity takes place:
  - (a) Encourage holistic site planning to reduce negative impacts to the community and the environment;
  - (b) Preserve vegetation and where appropriate requiring commensurate replanting;
  - (c) Require the implementation of best management practices (BMPs);
  - (d) Minimize adverse stormwater impacts related to land disturbance per the requirements of the Stormwater Management Manual for Western Washington or as amended pursuant to Chapter 14.32;
  - (e) Protect archaeological and historical resources pursuant to RCW Chapters 27.44 and 27.53;
  - (f) Establish administrative procedures to issue permits, approve plans and inspect land disturbance activities; and

- (g) Reduce the amount of time between land disturbance and the beginning of actual site construction.

**14.22.020 Applicability.**

- (1) **Generally.** This Chapter applies to all land disturbing activity, including forest practices subject to County jurisdiction, but except those activities identified in subsection (2).
- (2) **Exemption.** The following activities are exempt from the requirements of this Chapter, when they occur outside a critical area and its buffers:
  - (a) Land disturbing activity totaling less than 7,000 square feet of land cumulatively over a five-year period.
  - (b) Site investigations such as surveys, soil borings, test pits, percolation tests and other related activities, necessary for preparing land use or building permit applications provided the land disturbing activities are not greater than is necessary to accomplish the work and do not create permanent site impacts.
  - (c) The following commercial agricultural activities that are conducted on land designated Agricultural–Natural Resource Lands or Rural Resource—Natural Resource Lands:
    - (i) Tilling, soil preparation, fallow rotation, planting, harvesting and other commercial agricultural activities involving working the land. For this exemption to apply, development activities must occur outside all critical areas, together with the buffers of and setbacks from these critical areas.
    - (ii) Maintenance or repair of existing commercial agricultural facilities including drainage facilities and ponds.
    - (iii) New construction of drainage ditches (including enlargement of existing drainage ditches) that requires 500 cubic yards or less of grading. Such ditches shall not adversely impact critical areas or upstream or downstream properties, be located within 100 feet of streams, wetlands, lakes, marine waters, fish and wildlife habitat conservation areas, and erosion hazard areas, or contain water on site for retention, infiltration or evaporation. For this exemption to apply, development activities must occur outside all critical areas, together with the buffers of and setbacks from these critical areas.
  - (d) Agricultural activities as defined in SCC 14.04.020 are exempt from obtaining a land disturbance permit, provided that the following provisions are met:
    - (i) Agriculture is a legal use of the property where the activity occurs.
    - (ii) The activity requires no other permit or project approval from Skagit County except for a Floodplain Development Permit pursuant to SCC Chapter 14.34.
    - (iii) The activity will not occur in a critical area as defined by RCW 36.70A.030.
  - (e) Mineral resource operations including commercial mining, quarrying, excavating, or processing of rock, sand, gravel, aggregate, or clay and associated stockpiling when such operations are authorized by a special use permit pursuant to SCC 14.16.440, except that the following are not exempt:
    - (i) Reclamation;

- (ii) An operation which the Director determines may destabilize contiguous or adjacent properties; and
- (iii) An operation which the Director determines may result in an adverse downstream drainage impact.
- (f) Landscape installation or site improvements which do not result in a fill being placed behind a wall greater than four feet in height as measured from the bottom of the footing to the top of the wall or a cut more than four feet in depth or which does not exceed 15 cubic yards on any lot.
- (g) The installation of a fence or hedge pursuant to the restrictions of this title.
- (h) The removal of plants designated as noxious or invasive weeds.

**14.22.030 Permit Requirement.**

- (1) **Generally.** A land disturbance permit is required for all activities subject to this Chapter unless permit-exempt per subsection (2).
- (2) **Permit-exemption.** The following activities must comply with the substantive provisions of this chapter, but do not require a land disturbance permit:
  - (a) Land disturbance authorized by an building permit, shoreline permit, or preliminary approval of a land division.
  - (b) Land disturbing activity associated with public improvements and maintenance within the existing right-of-way; except this does not include activities that expand into a critical area or buffer, including, but not limited to:
    - (i) Roadside ditch cleaning, provided the ditch does not contain salmonids;
    - (ii) Pavement maintenance;
    - (iii) Normal grading of gravel shoulders;
    - (iv) Maintenance of culverts;
    - (v) Maintenance of flood control or other approved stormwater facilities;
    - (vi) Routine clearing within road right-of-way; and
    - (vii) Emergency public action necessary to protect public safety or private or public property from imminent danger.

**14.22.040 Application Requirements.**

- (1) A land disturbance application must be on forms provided by the Department and include the following items:
  - (a) A narrative of the project that describes the existing site conditions and development goals of the proposed work by including the following information:
    - (i) Specific work to be accomplished;
    - (ii) A time schedule for land clearing activities;
    - (iii) Type of equipment to be used;

- (iv) Measures proposed to protect the site and adjacent properties from potential adverse impacts;
  - (v) The estimated quantities/area of work involved; and
  - (vi) If excavated material is to be wasted off-site, a description of the location and the route to the disposal site.
- (b) A completed SEPA checklist if required pursuant to SCC Chapter 16.12;
  - (c) Demonstration of compliance with the development standards in SCC 14.22.050;
  - (d) A site plan that meets the Department's requirements;
  - (e) Any other items that may be required by the Administrative Official.
- (2) By submitting an application under this Section, the applicant consents to entry upon the subject site by the County during regular business hours for the purposes of making inspections to verify information provided by the applicant to ensure that work is being performed in accordance with the requirements of this chapter.
- (3) The Administrative Official has authority to review and to approve, conditionally approve, or deny a land disturbance application if it fails to comply with the requirements of this Title or RCW 76.09. Conditions of approval may include but are not limited to inspection by the applicant's CESCL prior to land disturbing activities and the establishment of financial securities in the form of performance and maintenance bonds or other conditions as deemed applicable by the Administrative Official.

#### **14.22.050 Development Standards**

- (1) Activities subject to this Chapter must comply with all applicable federal, state and local laws and regulations, including the following:
- (a) SCC Chapter 14.24 Critical Areas;
  - (b) SCC Chapter 14.26 Shorelines;
  - (c) SCC Chapter 14.32 Stormwater Management;
  - (d) SCC Chapter 14.34 Flood Damage Prevention;
  - (e) SCC Chapter 14.36 Public Works Standards;
  - (f) SCC Chapter 15.04 International Codes; and
  - (g) SCC Chapter 16.12 State Environmental Policy Act.
- (2) The Administrative Official may require additional or more stringent standards than those specified in this chapter to the extent necessary to protect the public health, safety, and welfare or to mitigate any adverse impacts from land disturbing activities.

#### **14.22.060 Performance and Securities.**

- (1) The Administrative Official may require the applicant to establish a financial security which may be acceptable to the County at its sole discretion, in an amount deemed by the County to be sufficient to reimburse the County if it should become necessary to enter the property for the purpose of correcting or eliminating hazardous conditions relating to land disturbance activities or for other purposes authorized in this chapter.

- (2) The security must be in an amount of at least the County's estimate of the cost of correcting or eliminating hazardous conditions that reasonably may occur, and/or of insuring compliance with the stipulations of the permit and the approved plans.

#### **14.22.070 Inspections**

- (1) A land disturbance permit may be required to submit to a final inspection to ensure that all work on a site has been completed pursuant to the approved permit and requirements of this Chapter.

#### **14.22.080 Forest Practices**

- (1) The definitions contained in RCW 76.09.020 of the Forest Practices Act and in WAC 222-16-010 and 222-16-050 of the Forest Practices Act's implementing regulations apply to all terms used in this section, except that the definitions contained in SCC Title 14 are applicable where not in conflict with the Forest Practices Act and its implementing regulations. In the event of any conflict between the definitions, the definitions in WAC chapter 222-16 prevail. This chapter applies to both Class-IV general and special forest practices as defined by WAC 222-16-050 for the purpose of conversion to a non-forestry use and any request for a Conversion Option Harvest Plan (COHP).
- (2) The County must coordinate the review of forest practice applications within the urban growth areas (UGAs) of incorporated cities and towns through interlocal agreements; except that the County must continue to condition forest practices within all UGAs to the full extent of this Chapter until such time as its jurisdictional responsibility is amended by interlocal agreements.
- (3) Skagit County has jurisdiction over the following forest practices:
  - (a) Class I, II, III and IV forest practices on ownerships of contiguous forest lands equal to or greater than 20 acres in an urban growth area (UGA) where the landowner submits to DNR and Skagit County a ten-year "statement of non-conversion" along with either an acceptable ten-year forest management plan (including reforestation), or proof that the land is currently enrolled under the provisions of RCW 84.33.
  - (b) Class IV General forest practices on a parcel or parcels cumulatively greater than twenty acres outside of a UGA, where the landowner submits to DNR and Skagit County a ten-year "statement of non-conversion" along with either an acceptable ten-year forest management plan (including reforestation), or proof that the land is currently enrolled under the provisions of RCW 84.33.
  - (c) Class II, III, IV-Special forest practices located outside UGAs, that are permitted or approved by the Washington Department of Natural Resources and do not have an associated COHP.
  - (d) Class I forest practices located outside of UGA's, except when forest practices are associated with conversion of land to a non-forestry use.
  - (e) Class I forest practices located within UGA's that do not include road construction or timber harvesting.
- (4) Table 14.22-I summarizes the jurisdictional authority for forest practices within Skagit County.

Table 14.22-I: County and DNR jurisdiction over forest practices.

Forest Practice Class	Inside UGAs		Outside UGAs
	With a statement of intent not to convert and FMP, enrolled in timber tax program or COHP.		
	20 acres or larger	Less than 20 acres	
Class IV-S	DNR	County	County
Class I	DNR	County	County <sup>2</sup>
Class II	DNR	County	
Class III	DNR <sup>1</sup>	County	
Class IV-G	n/a	n/a	County

<sup>1</sup> County has jurisdiction over Shoreline Conditional Use Permits and COHPs.

<sup>2</sup> WAC 222-16-050(2)(c) identifies these forest practices as Class IV-G.

<sup>3</sup> County has jurisdiction over conversions or lands likely to convert.

- (5) A forest practice subject to Skagit County jurisdiction requires a land disturbance permit as described in this Chapter. The application for the land disturbance permit must also include the following:
  - (a) A completed "Forest Practices Conversion Application" form as provided by the Department;
  - (b) Written verification from the Washington State Department of Natural Resources that the subject site is not and has not been subject to a notice of conversion to nonforestry use under RCW 76.09.060 during the six-year period prior to submission of the permit application;
  - (c) A site plan that includes the following:
    - (i) Location of existing and proposed skid roads, haul roads and landings within the project area; and
    - (ii) Field marking of site features. All critical areas and associated buffers, landing areas, tree retention areas and harvest/cutting boundaries shall be clearly marked at the site with flagging or colored paint and their location noted on the site plan.
- (6) The Department must notify the Washington State Department of Revenue within 60 days of approving a forest practices permit issued under this chapter. Such notification must include the following information:
  - (a) Landowner's legal name, address, and telephone number;
  - (b) Decision date of permit; and
  - (c) Parcel number and legal description (section, township, and range) of the subject site.
- (7) To improve the administration of the forest excise tax created by Chapter 84.33 RCW, the County must report information to the Department of Revenue for all approved forest practices permits no later than sixty days after the date the permit was approved.

- (8) 6-Year Moratorium on Development.
- (a) Per RCW 76.09.460, the Department may not issue any permit or approval relating to nonforestry uses of land that is subject to a 6-year moratorium.
  - (b) A property owner may apply for a waiver of the 6-year moratorium for a lot of record. An application for a waiver is subject to review under SCC Chapter 14.24.
    - (i) If the initial critical areas review and site visit concludes that no critical areas have been impacted, or do not exist, then the Administrative Official must issue the waiver with no further process.
    - (ii) If the initial critical areas review and site visit concludes that critical areas have been impacted:
      - (A) The Administrative Official must issue a notice of development application consistent with the procedures under SCC Chapter 14.06, including a 15-day comment period.
      - (B) The Administrative Official must review the project for consistency with SEPA under SCC Chapter 16.12.
      - (C) The applicant must obtain a critical areas site assessment for the property subject to the moratorium, including:
        - (I) A determination of the level of impacts to County-regulated critical areas and associated buffers that have occurred due to logging and any associated conversion activity;
        - (II) an estimated time needed for recovery of the critical area to a state comparable to what it was before the forest practice took place.
      - (D) If, based on the site assessment and any comments received, the Administrative Official determines that recovery of critical areas and associated buffers can be achieved, then the applicant must submit a mitigation plan and implement it consistent with SCC Chapter 14.24. and the moratorium must be lifted. If, however, critical areas and their buffers cannot be restored to a level of critical areas function comparable to what it was prior to the logging activity during the moratorium period, the Administrative Official must deny the request for a waiver of the moratorium.
  - (c) In situations where a request for waiver has been denied based on the evidence provided in the site assessment and public comment, restoration to the extent feasible must occur within the critical areas and their standard buffers (including reforestation), and no further land use approvals may be issued for the duration of the moratorium.

**14.22.090 Archaeological and Historical Resources**

- (1) The purpose of this section is to avoid the destruction of or damage to any site having historic or cultural values as identified by the appropriate agencies, including but not limited to affected Indian tribes and the Washington State Department of Archaeology and Historic Preservation (DAHP).



- (2) Archaeological sites are subject to the provisions of RCW chapters 27.53 and 27.44.
- (3) Consistent with RCW 27.53.060, whenever historical, cultural, or archaeological sites or artifacts of potential significance are discovered during land disturbing activities:
  - (a) work on the development site must stop immediately;
  - (b) the project proponent or responsible party must report the find to the County immediately;
  - (c) Skagit County must notify DAHP, the affected Tribes, and other appropriate agencies of the discovery.
  - (d) The project proponent or responsible party must retain a professional archaeologist to conduct an immediate site assessment and determine the significance of the discovery. If a negative determination is received, i.e., the report does not determine that the find is significant, the work may resume after consultation with the State and the affected Tribes. On receipt of a positive determination of the site's significance, work must remain stopped on the project site and the project proponent or responsible party may not resume development activities without authorization from DAHP.
- (4) If land disturbing activities encounter human skeletal remains during the course of construction, all activity must cease and the area of the find will be protected from further disturbance. The finding of human skeletal remains must be reported to local law enforcement and the county medical examiner as soon as possible. The county coroner may assume jurisdiction over the human skeletal remains and make a determination of whether those remains are forensic or non-forensic. Non-forensic remains must be reported to the Washington DAHP who will then take jurisdiction of the remains.

## ***Rural Forestry Initiative***

October 25, 2007

This is a report that highlights both the problems and the potential for forest management in rural areas. In this context rural forestry involves the management of trees on smaller parcels where the land may or may not be platted, and is associated with development or potential for development with a density of one house per 20 acres or greater.

Forest practices in these areas are often considered to be ancillary to the process of land conversion. And even when timbered acreage is retained on a portion of the property, the idea of long term sustainable forestry is generally an alien concept. In part this thinking is rooted in the conventional belief that forest management and development are mutually exclusive. It is also incorrectly believed that small tracts cannot be managed economically. While land use conflicts can occur anywhere trees are proposed to be harvested, the evidence shows that most litigation involves view shed areas where industrial forestry is practiced. Regarding the management of small tracts, there is no compelling evidence of any significant difference in economic factors relating to harvesting, reforestation and silvicultural practices on these lands compared to industrial acreages.

These low elevation rural forests typically have good soils with a long growing season. Historically these lands have provided a significant source of raw material for local saw mills and are ideal sites to maintain as working green belts for commercial timber production. Beyond jobs and fiber production these areas produce a negative carbon footprint while providing open space and wildlife habitat. In short, rural forestry is a highly desirable and important component to the landscape and our local economy.

Though public policy supports a "viable forest products industry" (Forest Practices Act RCW 76.09) and the "long term conservation of natural resource lands" (WAC 365-190-020 Growth Management) we have laws that actually work to the detriment of these goals. Sometimes the conflict is the result of a misinterpretation of a well intended law. The following is a discussion of laws and interpretations that are discouraging rural forestry in Skagit County. As part of this discussion, opportunities to rectify problems will be identified.

Since this is a discussion about maintaining forest management in rural areas as defined above, references to harvesting timber should be regarded as State approved non-conversion forest practices unless otherwise noted.

### ***Forest Practices on Platted Land (not including CaRD subdivisions)***

#### **Background:**

According to WAC 222-16-050(2) lands platted after January 1, 1960 are Class IV General forest practices and require preparation of a SEPA checklist in addition to a

Forest Practice Application. These lands are no different than any other forest land except for being platted.

**The Problem:**

The requirement for the SEPA checklist assumes that a conversion is taking place, which in this discussion is not the case.

Even though Skagit County by agreement with the Department of Natural Resources (DNR) currently defers processing of non-conversion Class IV General Applications to the DNR, this arrangement is set to change on January 1, 2009.

In 2009 Skagit County will process all Class IV General Applications including non-conversion activity. In this case critical area buffers will be applied, not Forest Practice buffers. Since Forest Practice buffers are geared for normal forest management activity, it is unnecessary and inappropriate to apply critical area buffers designed to provide protection in converted areas where intense land use activities are contemplated.

**Discussion:**

The requirement for SEPA in non-conversion forest practices that would otherwise be Class II or Class III activity (where SEPA is not required) is a nuisance for landowners and a misappropriation of agency time. This provision of the Forest Practices Act was created in 1974 and became outdated with the establishment of the Growth Management Act.

This law will become particularly onerous for forest management in 2009 if critical area buffers are applied vs. Forest Practice buffers. A landowner who is willing to continue managing for timber should not be penalized with buffers designed to address resource protection where conversion is occurring. If critical area buffers are applied (which greatly exceed Forest Practice buffering, particularly involving wetlands and non-fish bearing streams) the additional loss of harvestable acres and the increased cost of management may preclude the ability to practice forestry and actually encourage more land conversion.

**Solutions:**

The Legislature should repeal the "platted after January 1, 1960" provision of the Class IV General criteria.

Until the Legislature acts, Skagit County should either continue to defer non-conversion Class IV Generals to the DNR or process in house but defer to Forest Practice Rules for such practices. Note: King County by ordinance (Chapter 21A.24) has an "Allowed alteration" of critical area requirements for non-conversion Class IV G forest practices which defers to Forest Practice Rules.

***Forest Practices in the open space portion of a CaRD***

**Background:**

Skagit County Code 14.18.310(5) requires that the open space portion (other than Open Space Preservation Areas) of the CaRD be "subject to the provisions of Chapter 14.24 SCC, the Critical Areas Ordinance."

**The Problem:**

Forest practice activity is compromised by the same problems noted above for non-CaRD platted lands with the additional stifling mandate requiring adherence to the provisions of the Critical Areas Ordinance.

**Discussion:**

See Discussion of non- CaRD platted land above. Applying conversion buffers pursuant to the requirements of the Critical Areas Ordinance in the open space area of a CaRD serves only to interfere with the ability to conduct forest operations in an area intended for continued timber management. Indeed, severe restrictions, commensurate with the application of critical area buffers, may discourage forestry in favor of more intense uses.

**Solution:**

Skagit County Ordinances should reflect the intentions of State Legislation to maintain forested open space and a viable forest products industry. Lands committed to forestry, platted or otherwise should be managed under State Forest Practice Rules. Regardless of zoning designation, State rules should apply to the acres where forestry is practiced.

***Forest Practices and Conversion of land to non-forestry use***

**Background:**

Prior to July 22, 2007 a six year moratorium was applied to all areas harvested under any application other than a Class IV General Conversion application. This provision was replaced by RCW 76.09.470 which provides a process for addressing the circumstance of a landowner who did not state intent to convert his or her land to a non-forestry use, but decides to convert his or her land to a non-forestry use within six years of receiving an approved application. This process requires an assessment of the condition of the land subject to the application. The extent of compliance with local ordinances and regulations is determined and if full compliance is not found, a mitigation plan to address violations is required.

**The Potential Problem:**

While removal of the moratorium and replacing it with the process briefly outlined above is positive for forestry, there is reason to be concerned about how these new provisions are implemented. In the past Skagit County has applied the moratorium beyond the foot print of the actual forest practice, opting to include the entire legal lot. While this interpretation was never intended by the Legislature, the consequence has been frustrating and costly for landowners. Conflicts were created because while landowners were managing forested acreage on one portion of their property, they were unwittingly compromising other parts of the property intended for conversion activity. A law which was written to protect critical areas by denying conversion permits on acreage harvested under State Rules was used to deny conversion permits regardless of any overlap

involving the harvested area and the area intended for conversion. A potential problem will be a real problem if the new provisions are not limited to the footprint of the non-conversion application.

**Discussion:**

RCW 76.09.470 is designed to minimize and if necessary mitigate any conflicts arising from situations where timber is harvested under State Rules in an area where the landowner within six years decides to convert portions of land covered by the application. As with the previous law which established the moratorium, this law applies to the specific area of conflict, **not** the entire legal lot. These legislative measures were created as a means to discourage landowners from harvesting under State Rules when their intention is to convert the land. The purpose was to afford protection to critical areas in locations where development and intense land use practices are replacing forest management. They were never meant to frustrate the practice of forestry on portions of the land intended for timber management under State Rules.


**Solution:**

Revise County Ordinances relating to forest practices including 14.24.110 to reflect the process outlined by RCW 76.09.470. Ordinance language should clearly define the circumstances where the RCW 76.09.470 process should be applied. Mitigation (if necessary) pursuant to RCW 76.09.470 should be strictly limited to the area where conversion is contemplated. The lawful practice of forestry under State Rules should never be a basis for restrictions on subdivision, as lines on a map do not constitute a violation of critical areas.

**Attachments:**

- Portion RCW 76.09.060
- RCW 76.09.470
- SCC 14.24.110
- Portion SCC 14.18.310
- Portion K.C.C. 21A.24

This report was prepared in order to identify some of the State and Local laws, though enacted with good intentions, have produced a chilling effect on the prospect for future management of forests in rural areas. For all the benefits attained from the maintenance of a working rural forest we should work together with the goal of removing the disincentives encumbering these lands.

Prepared by: 

Dave Chamberlain

[RCWs > Title 76 > Chapter 76.09 > Section 76.09.060](#)[76.09.055](#) << [76.09.060](#) >> [76.09.063](#)**RCW 76.09.060****Form and contents of notification and application —  
Reforestation requirements — Conversion of forest land to  
other use — New applications — Approval — Emergencies.**

(1) The department shall prescribe the form and contents of the notification and application. The forest practices rules shall specify by whom and under what conditions the notification and application shall be signed or otherwise certified as acceptable. Activities conducted by the department or a contractor under the direction of the department under the provisions of RCW 76.04.660, shall be exempt from the landowner signature requirement on any forest practice application required to be filed. The application or notification shall be delivered in person to the department, sent by first-class mail to the department or electronically filed in a form defined by the department. The form for electronic filing shall be readily convertible to a paper copy, which shall be available to the public pursuant to chapter 42.56 RCW. The information required may include, but is not limited to:

(a) Name and address of the forest landowner, timber owner, and operator;

(b) Description of the proposed forest practice or practices to be conducted;

(c) Legal description and tax parcel identification numbers of the land on which the forest practices are to be conducted;

(d) Planimetric and topographic maps showing location and size of all lakes and streams and other public waters in and immediately adjacent to the operating area and showing all existing and proposed roads and major tractor roads;

(e) Description of the silvicultural, harvesting, or other forest practice methods to be used, including the type of equipment to be used and materials to be applied;

(f) Proposed plan for reforestation and for any revegetation necessary to reduce erosion potential from roadsides and yarding roads, as required by the forest practices rules;

(g) Soil, geological, and hydrological data with respect to forest practices;

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- (h) The expected dates of commencement and completion of all forest practices specified in the application;
  - (i) Provisions for continuing maintenance of roads and other construction or other measures necessary to afford protection to public resources;
  - (j) An affirmation that the statements contained in the notification or application are true; and
  - (k) All necessary application or notification fees.
- (2) Long range plans may be submitted to the department for review and consultation.
- (3) The application for a forest practice or the notification of a forest practice is subject to the reforestation requirement of RCW 76.09.070.
- (a) If the application states that any land will be or is intended to be converted:
- (i) The reforestation requirements of this chapter and of the forest practices rules shall not apply if the land is in fact converted unless applicable alternatives or limitations are provided in forest practices rules issued under RCW 76.09.070;
  - (ii) Completion of such forest practice operations shall be deemed conversion of the lands to another use for purposes of chapters 84.33 and 84.34 RCW unless the conversion is to a use permitted under a current use tax agreement permitted under chapter 84.34 RCW;
  - (iii) The forest practices described in the application are subject to applicable county, city, town, and regional governmental authority permitted under RCW 76.09.240 as well as the forest practices rules.
- (b) Except as provided elsewhere in this section, if the landowner harvests without an approved application or notification or the landowner does not state that any land covered by the application or notification will be or is intended to be converted, and the department or the county, city, town, or regional governmental entity becomes aware of conversion activities to a use other than commercial timber operations, as that term is defined in RCW 76.09.020, then the department shall send to the department of ecology and the appropriate county, city, town, and regional governmental entities the following documents:
- (i) A notice of a conversion to nonforestry use;
  - (ii) A copy of the applicable forest practices application or notification, if any; and
  - (iii) Copies of any applicable outstanding final orders or decisions issued by the department related to the forest practices application or notification.
- (c) Failure to comply with the reforestation requirements contained in any final order or decision shall constitute a removal of designation under the provisions of RCW 84.33.140, and a change of use under the provisions of RCW 84.34.080, and, if applicable, shall subject such lands to the payments and/or penalties resulting from such removals or changes.
- (d) Conversion to a use other than commercial forest product operations within six years after approval of

the forest practices application or notification without the consent of the county, city, or town shall constitute a violation of each of the county, municipal city, town, and regional authorities to which the forest practice operations would have been subject if the application had stated an intent to convert.

(e) Land that is the subject of a notice of conversion to a nonforestry use produced by the department and sent to the department of ecology and a local government under this subsection is subject to the development prohibition and conditions provided in RCW 76.09.460.

→ (f) Landowners who have not stated an intent to convert the land covered by an application or notification and who decide to convert the land to a nonforestry use within six years of receiving an approved application or notification must do so in a manner consistent with RCW 76.09.470.

(g) The application or notification must include a statement requiring an acknowledgment by the forest landowner of his or her intent with respect to conversion and acknowledging that he or she is familiar with the effects of this subsection.

(4) Whenever an approved application authorizes a forest practice which, because of soil condition, proximity to a water course or other unusual factor, has a potential for causing material damage to a public resource, as determined by the department, the applicant shall, when requested on the approved application, notify the department two days before the commencement of actual operations.

(5) Before the operator commences any forest practice in a manner or to an extent significantly different from that described in a previously approved application or notification, there shall be submitted to the department a new application or notification form in the manner set forth in this section.

(6) Except as provided in RCW 76.09.350(4), the notification to or the approval given by the department to an application to conduct a forest practice shall be effective for a term of two years from the date of approval or notification and shall not be renewed unless a new application is filed and approved or a new notification has been filed. At the option of the applicant, an application or notification may be submitted to cover a single forest practice or a number of forest practices within reasonable geographic or political boundaries as specified by the department. An application or notification that covers more than one forest practice may have an effective term of more than two years. The board shall adopt rules that establish standards and procedures for approving an application or notification that has an effective term of more than two years. Such rules shall include extended time periods for application or notification approval or disapproval. On an approved application with a term of more than two years, the applicant shall inform the department before commencing operations.

(7) Notwithstanding any other provision of this section, no prior application or notification shall be required for any emergency forest practice necessitated by fire, flood, windstorm, earthquake, or other emergency as defined by the board, but the operator shall submit an application or notification, whichever is applicable, to the department within forty-eight hours after commencement of such practice or as required by local regulations.

(8) Forest practices applications or notifications are not required for forest practices conducted to control exotic forest insect or disease outbreaks, when conducted by or under the direction of the department of agriculture in carrying out an order of the governor or director of the department of agriculture to implement pest control measures as authorized under chapter 17.24 RCW, and are not required when conducted by or under the direction of the department in carrying out emergency measures under a forest health emergency declaration by the commissioner of public lands as provided in RCW 76.06.130.



[RCWs](#) > [Title 76](#) > [Chapter 76.09](#) > [Section 76.09.470](#)

[76.09.460](#) << [76.09.470](#) >> [76.09.900](#)

**RCW 76.09.470**

**Conversion of land to nonforestry use — Action required of landowner — Action required of county, city, town, or regional governmental entity.**

(1) If a landowner who did not state an intent to convert his or her land to a nonforestry use decides to convert his or her land to a nonforestry use within six years of receiving an approved forest practices application or notification under this chapter, the landowner must:

(a) Stop all forest practices activities on the parcels subject to the proposed land use conversion to a nonforestry use;

(b) Contact the department of ecology and the applicable county, city, town, or regional governmental entity to begin the permitting process; and

(c) Notify the department and withdraw any applicable applications or notifications or request a new application for conversion.

(2) Upon being contacted by a landowner under this section, the county, city, town, or regional governmental entity must:

(a) Notify the department and request from the department the status of any applicable forest practices applications, notifications, or final orders or decisions; and

(b) Complete the following activities:

(i) Require that the landowner be in full compliance with chapter [43.21C](#) RCW, if applicable;

(ii) Receive notification from the department that the landowner has resolved any outstanding final orders or decisions issued by the department; and

(iii) Make a determination as to whether or not the condition of the land in question is in full compliance with local ordinances and regulations. If full compliance is not found, a mitigation plan to address violations

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of local ordinances or regulations must be required for the parcel in question by the county, city, town, or regional governmental entity. Required mitigation plans must be prepared by the landowner and approved by the county, city, town, or regional governmental entity. Once approved, the mitigation plan must be implemented by the landowner. Mitigation measures that may be required include, but are not limited to, revegetation requirements to plant and maintain trees of sufficient maturity and appropriate species composition to restore critical area and buffer function or to be in compliance with applicable local government regulations.

[2007 c 106 § 3.]

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not adversely impact critical areas or their buffers.

(9) Provided the requirements of SCC 14.24.120(4)(d) are met for ongoing agriculture, the lawful operation and maintenance of public and private diking and drainage systems which protect life and property along the Skagit and Samish Rivers and tidal estuaries in Skagit County. This exemption shall apply to the existing structures and design prism of levees, dikes, and artificial watercourses and the following subflood control zones: Britt Slough SFCZ, South Mount Vernon SFCZ and Dunbar SFCZ 40 feet landward of the landward toe of the structure or facility and 40 feet waterward of the waterward toe of the structure, measured horizontally from the face of the levee, dike or bank of the artificial drainage structure toward the ordinary high water mark. The exempt area for operation and maintenance may be managed to meet federal standards for funding assistance established by the United States Army Corps of Engineers under Public Law 84-99 or other laws and regulations adopted to guide the diking and drainage functions. This exemption shall not apply to public or private activities which expand the levee, dike or drain beyond its design characteristics at the time of adoption of this Critical Areas Ordinance, and activities which expand or create new facilities shall not be exempt.

(10) Education and scientific research activities which do not adversely impact critical areas or their buffers.

(11) Construction or modification of navigational aids and channels markers.

(12) Site investigation work necessary for land use applications such as surveys, soil logs, percolation tests and other related activities which do not adversely impact critical areas or their buffers. In every case, critical area impacts shall be minimized and disturbed areas shall be immediately restored.

(13) Activity adjacent to artificial watercourses which are constructed and actively maintained for irrigation and drainage; provided, that any activity shall comply with RCW 75.20.100 and 75.20.103 by securing written approval from the State Department of Fish and Wildlife; and provided further, that the activity must also comply with all applicable State and local drainage, erosion and sedimentation control requirements for water quality. The operator shall notify the Administrative Official in writing regarding the location and nature of anticipated activities a minimum of 14 days prior to commencing any such activity. Such notification shall be a condition for allowance of this activity without standard review.

(14) Maintenance activities such as mowing and normal pruning, provided that such maintenance activities are limited to existing landscaping improvements and do not expand into critical areas or associated buffers, do not expose soils, do not alter topography, do not destroy or clear native vegetation, and do not diminish water quality or quantity. This allowance shall not be construed as applying to agricultural activities undertaken outside the Agriculture-NRL district.

(15) Fish, wildlife, wetland and/or riparian enhancement activities not required as mitigation provided that the project is approved by the U.S. Department of Fish and Wildlife, the Washington State Department of Fish and Wildlife or the Washington State Department of Ecology. (Ord. O20030020 (part); Ord. 17938 Attch. F (part), 2000)

#### **14.24.110 County regulation of forest practices for the protection of critical areas.**

Forest practices governed under Chapter 76.09 RCW are subject to the provisions of this Section as follows:

(1) All Class IV-General forest practices that propose conversion to a use other than commercial timber production shall be subject to all of the provisions of this Section.

(2) Any request for County approval of a Conversion Option Harvest Plan (COHP) shall be subject to all of the provisions of this Section.

(3) The County shall coordinate the review of forest practice applications within the urban growth areas (UGAs) of incorporated cities and towns through inter-local agreements; provided, that the County shall continue to condition forest practices within all UGAs to the full extent of this ordinance until such time its jurisdictional responsibility is amended by interlocal

agreements.

(4) Forest practices of any class governed by Chapter 76.09 RCW that:

(a) Do not fall under Subsections (1), (2) or (3) of this Section;

(b) Where no significant threat to the public safety or welfare is indicated; and

(c) Where no indications exist of future conversion to uses other than forest practices shall be subject to the 6 year moratorium provisions of this Chapter consistent with Chapter 76.09 RCW. All forest practice related activities, however, will be regulated by the Department of Natural Resources under the provisions of Chapter 76.09 RCW and Title 222 WAC. Requests for waivers of the 6 year moratorium shall be subject to all the provisions of this Section (see Subsections (5), (6) and (7) of this Section).

(5) When harvesting takes place without a forest practice application (FPA) or where an undeclared conversion of forested land to a specified use has occurred under a non-conversion FPA without an approved COHP in good standing, the County shall impose a 6-year moratorium on all future activities which require a permit or land use approval from the County beginning from the date the harvesting activity was discovered by the DNR or the County.

(6) Waiver of the 6-Year Moratorium. The applicant may apply to the County for a waiver of the 6-year moratorium. The fee for all waiver applications shall be paid to the County and shall be double the standard fee amount charged by the DNR for a Class IV-General Conversion review.

(a) Waiver for 1 Single-Family Residence and Outbuildings. The 6-year moratorium may be waived for constructing a single-family residence or outbuildings, or both, on a legal lot and building site where such activity complies with all applicable County ordinances. Such waiver may be issued by the Planning Director where a finding can be made that granting the waiver meets the criteria noted in Subsection (6)(c) of this Section. Before acting on the request for waiver of the moratorium, the Planning Director, or designee, shall issue a notice of development application (NODA) consistent with the procedures under Chapter 14.06 SCC, including a 15-day comment period; provided further, where the initial critical area review and site visit concludes that no critical areas have been impacted, or do not exist, the Director may waive the NODA requirement and issue the waiver.

(b) For all other development approvals, including but not limited to subdivisions, short subdivisions, Comprehensive Plan amendments, rezones, special use permits, variances, and fill and grade permits (except where fill and grading is necessary to serve a single-family residence associated with a waiver request), the County shall require a public hearing before the Hearing Examiner consistent with the procedures contained in Chapter 14.06 SCC for such action.

(c) For both Subsections (6)(a) and (b) of this section, the following shall provide the criteria for considering a waiver to the 6-year moratorium:

(i) A critical areas site assessment must be prepared where warranted by the CAO following initial review and site visit of the use proposed for the property subject to the moratorium. The site assessment shall determine the level of impacts to County regulated critical areas and associated buffers that have occurred due to logging and any associated conversion activity. The site assessment shall also include an estimated time needed for recovery of the critical area to a state comparable to what it was before the forest practice took place.

(ii) If, based on the prepared site assessment and comments received, the Planning Director (for single-family residences) or Hearing Examiner (for waivers subject to public hearings) determines that recovery of the critical area(s) and associated buffers can be achieved within 6 years, then a mitigation plan shall be prepared and implemented consistent with the CAO and the waiver shall be lifted. If, however, critical areas and their buffers cannot be restored within a 6-year period to a level of critical area function comparable to what it was prior to the logging activity, the request for a waiver of the moratorium shall be denied and the County shall not accept applications for development permits for a duration of 6 years unless compensatory mitigation can be performed as approved by the County. For purposes of this Section,

compensatory mitigation shall mean compliance with SCC 14.24.240(10), for wetlands; there are no compensatory mitigation options for fish and wildlife habitat conservation areas (SCC 14.24.500), including riparian areas, and none for geologically hazardous areas (SCC 14.24.400)—the landowner must meet the mitigation standards under SCC 14.24.530 and/or SCC 14.24.430 in order to be eligible for the waiver.

(7) In situations where a request for waiver has been denied based on the evidence provided in the site assessment and public comment, restoration to the extent feasible shall occur within the critical area and their standard buffers (including reforestation), and no further land use approvals shall be issued for the duration of the 6-year moratorium. (Ord. 17938 Attch. F (part), 2000)

#### **14.24.120 Ongoing agriculture.**

(1) Purpose and Intent. The purpose of this Section is to address 2 mandates under the Growth Management Act (GMA): (a) to protect the existing functions and values of fish and wildlife habitat conservation areas (FWHCAs) in and adjacent to natural, modified natural and artificial watercourses as defined in SCC 14.04.020 (collectively "watercourses"), and (b) to conserve and protect agricultural lands of long-term commercial significance, specifically those lands in ongoing agricultural activity as defined by SCC 14.04.020 that are located adjacent to these watercourses. For purposes of this Section, "existing functions and values" shall mean the following:

- (a) Water quality standards identified in Chapter 173-201A WAC.
- (b) The existing presence or absence of large woody debris within the watercourse.
- (c) The existing riparian buffer characteristics and width, including but not limited to the existing amount of shade provided by the existing riparian buffer.
- (d) The existing channel morphology.

Because many of the areas that are the subject of this Section are located in the Skagit and Samish River deltas or floodplains, where substantial diking, drainage and subflood control zone infrastructure has been constructed and where various diking and drainage districts and subflood control zones have lawful obligations to maintain agricultural and other drainage functions and infrastructure as established in RCW Titles 85 and 86, this Section also must accommodate those ongoing diking, drainage and flood control functions. Agricultural operations on lands which are not included in the definition of ongoing agriculture are required to comply with the other provisions of Chapter 14.24 SCC.

It is the goal of Skagit County to administer the provisions of this Section consistent with local, State and Federal programs, statutes and regulations to protect the health, welfare and safety of the community, to accommodate continued operation and maintenance of the diking, drainage and flood control infrastructure and to protect agriculture, natural resources, natural resource industries and fish and wildlife habitat conservation areas in and adjacent to watercourses. This Section is intended, to the maximum extent possible, to rely on and coordinate with but not substitute for or duplicate other State and Federal programs, statutes and regulations that address agricultural activities in a manner that protects water quality and fish habitat. This Section is intended to supplement those existing State and Federal programs, statutes and regulations only in those areas where the County has determined existing programs do not fully address GMA requirements to protect FWHCAs in and adjacent to watercourses and to conserve agricultural lands of long-term commercial significance.

Because this Section only applies to areas in ongoing agriculture, and applies to artificial and modified natural watercourses as defined in SCC 14.04.020 that have been constructed and/or maintained to address drainage and flood control mandates under RCW Titles 85 and 86, most of the existing functions and values of the FWHCAs at issue in this Section no longer contain all of the natural, forested riparian buffer attributes and associated functions and values identified as necessary for fish habitat. As such, this Section is to be applied in conjunction with the

- (b) At the time of recording, all CaRDs shall be identified on the County's official land use map. Applicable open space designations shall be maintained through a plat restriction. (Ord. O20070009 (part); Ord. O20030016 (part); Ord. 17938 Attch. F (part), 2000)

**14.18.310 General approval provisions—CaRD.**

- (1) The application shall meet the requirements of the underlying land division permit and those outlined in this Section.
- (2) Allowable Density. The maximum residential gross densities shall not exceed those set forth in the following lot size table. The maximum density may not necessarily be granted if a density limitation is necessary to meet septic and/or water system requirements. There shall be no density bonus for CaRD developments in areas designated as a "sole source aquifer," except where the source of water is from a public water system whose source is outside the designated area or from an approved alternative water system pursuant to Chapter 12.48 SCC. Applications for such systems are processed pursuant to the regulations outlined in Chapter 12.48 SCC. Applications for CaRDs requesting an alternative system to obtain a density bonus shall be processed as a Level II application. Hearing Examiner criteria for review of an alternative system shall ensure that the system has no adverse impacts to the sole source aquifer. There shall be no density bonus for CaRD developments where the water source is in a low flow watershed, unless the applicant has demonstrated that there is no continuity between the water source(s) and the low-flow stream per SCC 14.24.350(5)(c).

Zone	Maximum Residential Densities with a CaRD*	Open Space Options
Rural Intermediate	1/2.5 acres or 1 per 1/256 of a section	All, where appropriate
Rural Village Residential	1/1 acre or 1 per 1/640 of a section with public water and septic or 1/2.5 acres or 1/256 of a section with private water and septic	All, where appropriate
Rural Reserve	2/10 acres or 2 per 1/64 of a section	All, where appropriate
Agricultural—Natural Resource Lands	1/40 acres or 1 per 1/16 of a section	Os-PA, Os-NRL Os-RSV (per Subsection (6))
Industrial—Natural Resource Lands	1/80 acres or 1 per 1/8 of a section	Os-PA, Os-NRL Os-RSV (per Subsection (6))
Secondary Forest—Natural Resource Lands	1/20 acres or 1 per 1/32 of a section	Os-PA, Os-NRL Os-RSV (per Subsection (6))
Rural Resource—Natural Resource Lands	4/40 acres or 4 per 1/16 of a section	Os-PA, Os-NRL Os-RSV (per Subsection (6))
	*Exception: Maximum residential densities for lands in or within one-quarter mile of a designated Mineral Resource Overlay (MRO) shall be no greater than 1/10 acres; provided, that if the underlying land use designation density of land within one-quarter mile of MRO lands is greater than 1/10 acres, the development rights associated with that density may be transferred to and clustered on that portion of the property located outside of one-quarter mile for the MRO lands, consistent with the CaRD policies in the Comprehensive Plan.	

- (3) Open Space Required. CaRDs shall provide open space. All lands within a CaRD shall be open space in accordance with Subsection (5) of this Section, except for the following:
  - (a) Building lots (i.e., lots which do not contain open space);
  - (b) The development envelope of a lot containing open space; or
  - (c) Development envelopes when a binding site plan is utilized.
- (4) Open space shall either be located in:
  - (a) One separate tract within the CaRD, retained in its entirety for open space; or
  - (b) A dedicated open space area on one of the lots in the CaRD. This lot shall have a building envelope, where a house and accessory structures may be located, which is no larger than the maximum lot size allowed by Subsection (7) of this Section.
- (5) Designation, Allowed Uses, and Preservation of Open Space. Open space within a CaRD shall be designated per the following 6 categories, based on the zoning designation and characteristics of the site. Accessory structures to the primary use of each open space designation are allowable if allowed by the underlying zoning. CaRDs may contain more than 1 type of open space; provided, that all open space shall be within 1 tract or lot.
  - (a) Open Space Preservation Areas (Os-PA). The purpose of this designation is to set areas of open space in a protective easement in order to protect critical areas without the expense of a detailed site assessment, historic sites and view sheds. All lands which have not received a site assessment pursuant to Chapter 14.24 SCC, Critical Areas Ordinance, shall be placed in this category. If in the future a critical area site assessment is performed and the critical areas have been delineated (see SCC 14.24.170), then the Os-PA parcel may be changed to another open space designation based on the criteria set forth in this Section with the critical areas identified as protected critical areas (PCAs). Amendments to the plat map and recorded easement shall be required. A revised plat map for this purpose will not be considered a plat amendment. Nonresidential historic sites and their landscape setting shall also be placed in this category. Historic sites used as residences may be located inside or outside of this open space. All open space designated Os-PA shall be preserved pursuant to SCC 14.24.160 and 14.24.170 until such time as a different open space designation is requested and Chapter 14.24 SCC is satisfied. Uses and preservation of the Os-PA shall occur as follows:
    - (i) Critical Areas. Follow the parameters set forth in Chapter 14.24 SCC for conservation and maintenance.
    - (ii) Historic Sites. A use covenant with covenants, conditions and restrictions (CC&Rs) shall be determined through the CaRD review process and noted on the face of the plat. The duration of the covenant shall be noted on the plat.
  - (b) Open Space Natural Resource Lands (Os-NRL). The purpose of this open space is to preserve the natural resource lands within the County by clustering development and leaving the remainder open for resource production. The open space within CaRDs zoned Ag-NRL, IF-NRL, SF-NRL, or RRc-NRL shall be placed in this category, unless designated Os-PA, subject to the provisions of Chapter 14.24 SCC, the Critical Areas Ordinance. All open space designated Os-NRL shall be placed in a natural resource lands easement (NRLE), which restricts the grantor and its heirs, successors and assigns from exercising rights to use and subdivide the land for any and all residential, recreational, commercial, and industrial purposes and activities which are not incidental to the purpose of the NRLE until such time that the land no longer has long-term commercial significance for the production of food, agriculture products, timber or extraction of minerals. Property is restricted to natural resource production as defined in the NRLE; provided, that it may be used for those uses outlined in the underlying zone (except for a dwelling unit). In the case of Agriculture and Industrial Forest lands, restrictions defined in the NRLE may only be extinguished upon a declaration in a court of competent jurisdiction finding that it is no longer possible to commercially use the property for the production of food, agriculture products, timber, or extraction of minerals.
  - (c) Open Space Urban Reserve (Os-UR). This designation is to retain areas of open space until such time that urban development is deemed appropriate for that area and then to continue to require a portion of that original space to be preserved. This open space may only be used within CaRDs on lands zoned Rural Village Residential, Rural Intermediate, or Rural Reserve, and only if these areas are located on a parcel of which 50% or greater is located within one-quarter mile of urban growth areas or Rural Villages excluding those areas subject to Subsections (5)(a) and (b) of this Section, and excluding Fidalgo Island until such time that a subarea plan which allows for this option has been completed in conjunction with any relevant amendments to the Comprehensive Plan for purposes of consistency. This open space designation if supported by a 20-year needs

**Chapter 21A.24**  
**CRITICAL AREAS**  
*(Formerly Environmentally Sensitive Areas)*

**Sections:**

21A.24.010	Purpose.
21A.24.020	Applicability.
21A.24.030	Appeals.
21A.24.040	Rules.
21A.24.045	Allowed alterations.
21A.24.051	Agricultural activities development standard.
21A.24.055	Rural stewardship plans.
21A.24.061	Public rules for rural stewardship and farm management plans.
21A.24.065	Basin and Shoreline Conditions Map.
21A.24.070	Alteration exception.
21A.24.090	Disclosure by applicant.
21A.24.100	<i>Critical area review.</i>
21A.24.110	Critical area report requirement.
21A.24.125	Avoiding impacts to critical areas.
21A.24.130	Mitigation and monitoring.
21A.24.133	Off-site mitigation.
21A.24.137	Resource mitigation reserve.
21A.24.140	Financial guarantees.
21A.24.160	Critical area markers and signs.
21A.24.170	Notice of critical areas.
21A.24.180	<i>Critical area tracts and designations on site plans.</i>
21A.24.200	Building setbacks.
21A.24.205	Coal mine hazard areas — classifications.
21A.24.210	Coal mine hazard areas — development standards and alterations.
21A.24.220	Erosion hazard areas — development standards and alterations.
21A.24.230	Flood hazard areas — components.
21A.24.240	Zero-rise flood fringe — development standards and alterations.
21A.24.250	Zero-rise floodway — development standards and alterations.
21A.24.260	FEMA floodway — development standards and alterations.
21A.24.270	Flood hazard areas — certification by engineer or surveyor.
21A.24.275	Channel migration zones — development standards and alterations.
21A.24.280	Landslide hazard areas — development standards and alterations.
21A.24.290	Seismic hazard areas — development standards and alterations.
21A.24.300	Volcanic hazard areas — development standards and alterations.
21A.24.310	Steep slope hazard areas — development standards and alterations.
21A.24.311	Critical aquifer recharge areas — maps adopted.
21A.24.312	Critical aquifer recharge areas — reclassification or declassification.
21A.24.313	Critical aquifer recharge areas — categories.
21A.24.314	Critical aquifer recharge areas — King County Code provisions adopted — Washington state underground tank provisions implemented.
21A.24.315	Board of Health regulations adopted.
21A.24.316	Critical aquifer recharge areas — development standards.
21A.24.318	Wetlands — categories.
21A.24.325	Wetlands — buffers.
21A.24.335	Wetlands — development standards and alterations.
21A.24.340	Wetlands — specific mitigation requirements.
21A.24.342	Wetlands — agreement to modify mitigation ratios.
21A.24.345	Specific mitigation requirements — wetland mitigation banking.
21A.24.355	Aquatic areas — water types.
21A.24.358	Aquatic areas — buffers.
21A.24.365	Aquatic areas — development standards and alterations.



(King County 6-2006)  
CRITICAL AREAS

21A.24.045

**KEY**  
Letter "A" in a cell means alteration is allowed  
  
A number in a cell means the corresponding numbered condition in subsection D. applies  
  
"Wildlife area and network" column applies to both Wildlife Habitat Conservation Area and Wildlife Habitat Network

L A N D S L I D E  H A Z A R D	O V E R  A N D  B U F F E R	40%	S T E E P  S L O P E  H A Z A R D	A N D  B U F F E R	W E T L A N D  A N D	B U F F E R	A Q U A T I C  A R E A  A N D	B U F F E R  A N D  S E V E R E	C H A N N E L  M I G R A T I O N	W I L D L I F E  A R E A	A N D  N E T W O R K
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ACTIVITY						
<b>Structures</b>						
Construction of new single detached dwelling unit				A 1	A 2	
Construction of nonresidential structure				A 3	A 3	A 3, 4
Maintenance or repair of existing structure	A 5	A		A	A	A 4
Expansion or replacement of existing structure	A 5, 7	A 5, 7		A 7, 8	A 6, 7, 8	A 4, 7
Interior remodeling	A	A		A	A	A
Construction of new dock or pier				A 9	A 9, 10, 11	
Maintenance, repair or replacement of dock or pier				A 12	A 10, 11	A 4
<b>Grading</b>						
Grading		A 13			A 14	A 4, 14
Construction of new slope stabilization	A 15	A 15		A 15	A 15	A 4, 15
Maintenance of existing slope stabilization	A 16	A 13		A 17	A 16, 17	A 4
Mineral extraction	A	A				
<b>Clearing</b>						
Clearing	A 18	A 18, 19		A 18, 20	A 14, 18, 20	A 4, 14, 18, 20
Cutting firewood		A 21		A 21	A 21	A 4, 21
Removal of vegetation for fire safety				A 22	A 22	A 4, 22
Removal of noxious weeds or invasive vegetation	A 23	A 23		A 23	A 23	A 4, 23
<b>Forest Practices</b>						
Nonconversion Class IV-G forest practice	A 24	A 24		A 24	A 24	A 24, 25
Class I, II, III, IV-S forest practice	A	A		A	A	A

(King County 6-2006)  
ZONING

21A.24.045

18. Allowed for the removal of hazard trees and vegetation as necessary for surveying or testing purposes.

19. The limited trimming and pruning of vegetation for the making and maintenance of views if the soils are not disturbed and the activity will not adversely affect the long term stability of the slope, erosion or water quality.

20. Harvesting of plants and plant materials, such as plugs, stakes, seeds or fruits, for restoration and enhancement projects is allowed.

21. Cutting of firewood is subject to the following:

- a. within a wildlife habitat conservation area, cutting firewood is not allowed;
- b. within a wildlife network, cutting shall be in accordance with a management plan approved under K.C.C. 21A.14.270, as recodified by this ordinance; and
- c. within a critical area buffer, cutting shall be for personal use and in accordance with an approved forest management plan or rural stewardship plan.

22. Allowed only in buffers if in accordance with best management practices approved by the King County fire marshal.

23. Allowed as follows:

- a. if conducted in accordance with an approved forest management plan, farm management plan, or rural stewardship plan; or
- b. without an approved forest management plan, farm management plan or rural stewardship plan, only if:

(1) removal is undertaken with hand labor, including hand-held mechanical tools, unless the King County noxious weed control board otherwise prescribes the use of riding mowers, light mechanical cultivating equipment or herbicides or biological control methods;

(2) the area is stabilized to avoid regrowth or regeneration of noxious weeds;

(3) the cleared area is revegetated with native or noninvasive vegetation and stabilized against erosion; and

(4) herbicide use is in accordance with federal and state law;

24. Only if in accordance with chapter 76.09 RCW and Title 222 WAC and:

- a. a forest management plan is approved for the site by the King County department of natural resources and parks; and
- b. the property owner provides a notice of intent in accordance with RCW 76.09.060 that the site will not be converted to nonforestry uses within six years.

25. Only if in compliance with published Washington state Department of Fish and Wildlife and Washington state Department of Natural Resources Management standards for the species. If there are no published Washington state standards, only if in compliance with management standards determined by the county to be consistent with best available science:

26. Allowed only if:

- a. there is not another feasible location with less adverse impact on the critical area and its buffer;
- b. the corridor is not located over habitat used for salmonid rearing or spawning or by a species listed as endangered or threatened by the state or federal government unless the department determines that there is no other feasible crossing site.
- c. the corridor width is minimized to the maximum extent practical;
- d. the construction occurs during approved periods for instream work; and
- e. the corridor will not change or diminish the overall aquatic area flow peaks, duration or volume or the flood storage capacity.

27. To the maximum extent practical, during breeding season established under K.C.C. 21A.24.382, land clearing machinery such as bulldozers, graders or other heavy equipment are not operated within a wildlife habitat conservation area.

28. Allowed only if:

- a. an alternative access is not available;



## Skagit River System Cooperative

11426 Moorage Way • P.O. Box 368 LaConner, WA 98257-0368  
Phone: 360-466-7228 • Fax: 360-466-4047 • www.skagitcoop.org

Attachment 3

June 24<sup>th</sup>, 2009

SKAGIT COUNTY  
PERMIT OFFICE

JUN 25 2009

RECEIVED

Mr. Gary Christensen  
Skagit County Planning and Development Services  
1800 Continental Place  
Mount Vernon, WA 98273

Reference: Skagit Critical Areas Ordinance forestry rules DNS

Dear Mr. Christensen:

Skagit River System Cooperative (SRSC) appreciates the opportunity to comment on upcoming changes to the Skagit County Code, in particular SCC Section 14.24, the Critical Areas Ordinance (CAO). We would assert that these changes, although short in text, represent a substantial and far-reaching change to land use management on the ground, and we expect a substantial and significant effect on the environment. We therefore do not concur with the threshold determination issued by the County and request that a determination of significance be made regarding these changes. We make these comments on behalf of the Swinomish Indian Tribal Community and Sauk-Suiattle Indian Tribe.

As we understand it, the proposed changes include the addition of one sub-section in 14.24.070, for the activities allowed without standard CAO review. The new sub-section would allow Class IV General forest practices (non-conversion harvest) on lands designated as Natural Resource lands on which a natural resources easement (a NRLE) has been established. A NRLE is established on natural resource lands where a CaRD (Conservation and Reserve Development) subdivision is proposed. The NRLE prevents the current and subsequent owners from dividing or using the land in a way not incidental to the natural resource purposes, such as food or timber production. Forest practices on the resource land portion of the CaRD would be exempted from CAO review but governed instead by the State Department of Natural Resources under WAC 222. The County would continue to enforce the NRLE and the residential portion of the CaRD.

Current DNR forest practices regulations exempt Small Forest Landowners with less than 80 acres of timber who are applying to harvest less than 20 acres from the normal buffer regulations (WAC 222-30-023). For small forest landowners the buffers on salmon bearing streams can be as narrow as 29 feet and have as few as 29 trees per 1000 feet of stream, which equates to a single line of trees on a 34-foot spacing. These exempt harvests potentially constitute the vast majority of the timber activities on NRLEs administered by Skagit County. By our calculations nearly 30 percent of Skagit County non-industrial natural resource lands are on parcels less than 20 acres, so the change from current land use regulations is significant. We estimate that more

than 40,000 acres of land could potentially be exempt from the CAO and fall under the DNR small forest landowner exemption instead, resulting in buffer reductions on fish-bearing waters from 150 feet under the CAO to 29 feet under the DNR forest practices regulations.

The DNR forest practices regulations for large landowners are less stringent and more complex than the Skagit CAO in protecting streams and wetlands. For example, Skagit CAO regulations for Type S (salmon bearing) streams require a 200-foot no-cut buffer, whereas the DNR regulations have a three-zone buffer of varying widths, depending on site potential and stream size, and partial harvest in two of the three zones. Under DNR rules tree growth modeling is required to determine if a particular stand meets growth requirements (WAC 222-30-021). Except in cases where channel migration zones are wide, the DNR buffers would never be wider than those provided under the CAO, and hence would provide less protection for streams and riparian areas. Having said that, SRSC participated in the development of the DNR forest practices regulations at the State level, and is comfortable with their implementation on lands that are, and always will be, dedicated to forestry uses. The small forest landowner exemption is however a sticking point to which SRSC vigorously objects. The very fact that a CaRD is being applied for indicates a conversion of the parcel from forestry to other uses. Slicing up the uses within a single relatively small parcel is merely creating a pathway for diminished environmental protection.

In summary, on parcels where forest harvesting will continue without future conversion (to residential or commercial areas) the DNR Forest Practices rules for large landowners may provide adequate protection for streams, as is currently the case on private lands across the state. However, on lands where the small forest landowner exemption applies the buffers will be less than adequate, as has been repeatedly shown by the best available science (which SRSC can provide, again, if necessary). The potential for small forest landowner exemptions with this change is immense, and constitutes more than a third of the non-industrial natural resource lands under County jurisdiction. By any measure this regulatory change will have a significant effect on the Skagit County environment, and should receive a commensurate SEPA determination.

As usual, SRSC appreciates the opportunity to comment on this proposal, and we look forward to continuing our collaborative relationship with the County. If you have any questions about our comments, or if there is anything more that we can provide, please don't hesitate to call me at (360) 466-7308 or email at [thyatt@skagitcoop.org](mailto:thyatt@skagitcoop.org)

Sincerely,



Tim Hyatt  
Resource Protection Ecologist  
Skagit River System Cooperative

cc: Will Honea  
Ryan Walter



*Goodyear Nelson  
Hardwood Lumber Co., Inc.*



P.O. Box 997 • Bellingham, Washington 98227 • Phone: (360) 733-3960 • FAX: (360) 733-0803

June 29, 2009

Skagit County Planning Commission  
1800 Continental Place  
Suite 100  
Mount Vernon, WA 98273

Commissioners:

I want to share a couple of thoughts regarding forestry within the Planning Department package coming before you this evening.

The rural forestry initiative and the subsequent permitting process is a project that has been worked out by the Forest Advisory Board and the Planning Department. This is a first step in defining the permitting process between land conversions and on going forestry operations. I believe this is a good beginning, but only the start.

Interestingly enough, after months of collaboration on this issue, the Planning Department has never had the time to explain to the FAB the need for the department's changes involving subdivisions on resource lands.

The Planning Departments efforts to terminate subdivision opportunities on IF, SF and Rural Resource lands comes as a complete surprise and I find this absolutely unacceptable! This type of policy only serves to reduce the value of our lands!

If we are forced to give up our only management options, it will be just a matter of time before we will have no options at all, and the small timberland owners will disappear from the landscape.

I know that you hear often from some of our critics that all we want is to develop our property. I hope you will look at our track record.

We can't afford to give up the options that keep us in business. Time and again when confronted with dissatisfied neighbors over harvest plans, the one card we have to play is if not harvest and management then houses. Forest management wins out every time.

Please put the attempt to change the rules regarding being in a fire district prior to 2005 on hold and give the FAB a chance to discuss the need for this change with the planning department.

Thank You,

*Paul Kriegel*  
Paul Kriegel

## Comments to the Skagit County Planning Commission – June 30, 2009

The Forestry Advisory Board (FAB) is dedicated to preserving working forests in Skagit County; this includes Federal, State and private lands. Within County jurisdiction, expansive forests are most recognized in the resource zones, yet it is also true that productive forests occupy thousands of acres in the various rural zones. While most of the privately owned forested acreage is located in remote areas within the Industrial Forest zone, a large percentage of forest cover is located in areas associated with partial development including houses fields and other non-forestry uses.

Since 2007 our Board has promoted the Rural Forestry Initiative as a means to maintain and encourage the continuation of forest management on lands of mixed use. While these lands can be of great value for many uses, our intent is to strengthen the option to practice forestry on at least portions of these lands.

The FAB Board has worked hard to stay informed and participate on all issues relating to forest land. For this reason we were disappointed to find that a major land use proposal was included in the current code update process without any prior knowledge. I am referring to the proposed revision to the Land Division ordinance that would prohibit subdivision in IF, SF, and Rural Resource lands.

These lands include a bundle of rights that have collective value. Certainly one of the values is the productivity of the land for growing timber. Other uses carry value as well. These combined values are part of the intricate uses of the land for overall management of assets. Removing these rights without thorough and careful consideration sends a chilling message to landowners about the stability of land investments.

In the future I hope that the FAB will be included in the early discussions about proposals with significant potential to affect the value and use of forest lands in Skagit County. As we all know, well intended actions often result in great harm through unintended consequences.

Thank you,



Dave Chamberlain  
FAB Chair

Comments to the Skagit County Planning Commission – June 30, 2009

Speaking as the Chairman of the Forestry Advisory Board this day has been long awaited. Since the Board was established in 2004 we have worked on various matters concerning forest practices. Early on most of our efforts involved State actions that would hinder forestry in Skagit County. Since 2007 we have been working on a project called the Rural Forestry Initiative, also known as RFI. RFI is a County based initiative aimed at removing obstacles to practicing forestry on rural lands in Skagit County. Though the proposed code changes cover only a portion of the RFI package it is a worthy starting point.

In the package of code changes that you are reviewing, RFI concepts are included in CaRD subdivisions involving resource lands. The RFI concept is very basic, and simply stated involves application of State Forest Practices Rules to the portion of a parcel being managed for forestry, while CAO regulations would apply to any areas where land is being converted to non-forestry use.

CAO regulations were established pursuant to the Growth Management Act and were intended to protect critical areas in association with conversion activity. Critical area buffers were never intended to address resource protection for ongoing forest practice activity. The Forest Practices Act is the long standing regulatory framework governing the protection of public resources during the conduct of forest practices.

The proposed code amendment in this case falls under the category of rectifying inconsistencies. The inconsistency in this case is the application of a development regulation on land that has not been and is not being converted.

Implementation of RFI will allow landowners to manage their land for timber under the laws designed for such practices. The misapplication of the CAO causes multiple deterrents for prospective forest managers. There is the consequence of a reduced land base from additional buffering, permitting costs would be exponentially higher, and managers may not be able to obtain timely approvals when attempting to respond to marketing windows.

Support for the code changes involving CaRD subdivisions in resource lands will promote the maintenance of forested open space and will contribute to the rural character of the County.

Thank you,



Dave Chamberlain  
Chair, Skagit County Forestry Advisory Board



June 30, 2009

Planning Commission Members:

Thank you for the opportunity to comment on the proposed changes to the Critical Areas Ordinance. I am a Forestry Advisory Board (FAB) member and a professional forester who frequently works in Skagit County. I would like to express my support for the Planning Department's proposal for the Rural Forestry Initiative (RFI).

The viability of maintaining forestland is being increasingly threatened by regulatory, market, and development pressures. RFI is a means of addressing those pressures by giving forestland owners increased flexibility to manage their land.

Simply stated, RFI advocates applying critical areas regulations where true development activity is taking place and forestry regulations where forestry is taking place. Development means removing of trees and stumps and not planting trees back. Forestry is management of (to include harvest) trees and replacing those trees with new trees.

Some people have thought that simply drawing lines on a map and dividing a property into large lots (10 acre, 20 acre parcels etc.) constituted "development" of the entire property. RFI rejects this notion in that simply drawing lines on a map via land division does not mean that the entire area is now lost to forestry. My experience working with a wide variety of private owners over the last 17 years has confirmed to me that forestry and low-density development can be quite compatible. There is no reason that an owner of a 10, 20, or 40 acre parcel cannot maintain a home and a viable tree farm. In fact, many of these owners are able to take better care of their properties because they live on site. RFI simply proposes to maintain critical areas standards on portions of the property where development activity is taking place and Forest Practices Code standards on portions of the property being maintained in trees. A Natural Resource Lands Easement can be recorded on the property title to ensure the large majority of the land is maintained in forestry.

While some may view this proposal as a way to allow more development on forestland, I view it as a way to maintain forestland on property that has a potential for low impact development.

The current Forest Practices Code was heavily scrutinized before adoption. It received federal assurances of adequacy by such agencies as National Marine Fisheries Service, U.S. Fish and Wildlife Service, and the Environmental Protection Agency (via Dept. of Ecology) for the protection of wildlife and clean water resources. This code has proven to be effective in protecting resources where forestry is being practiced.



Over the last decade forest landowners have been sent the regulatory message that tree farming is not a favored land use. It is time to send these owners a message that reinforces continuing forestry land use. Please join me in supporting RFI.

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**From:** [RATCLIFF, MARC \(DNR\)](#)  
**To:** [KirkJohnson](#)  
**Subject:** RE: County and DNR review of forested land  
**Date:** Wednesday, August 03, 2016 10:12:55 AM  
**Attachments:** [Notes from RFI discussion with staff\\_JMR edits.docx](#)

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Kirk

The legislature has tasked DNR with the regulation of forest activities (timber harvest, road building) on forestland (land not being converting to another use and ongoing forestry). Although local governments apply CAOs as adopted under the GMA, DNR maintains the jurisdiction (FP rules) when the activity is indeed forestry and outside the few exceptions (COHPs, the county assumes transfer of jurisdiction outlined in RCW 76.09.240).

DNR's decision and assumption of jurisdiction is tied to the 'land' for which the activity is being conducted (RCW 76.09.050 and RCW 76.09.460 speak to the footprint of the activity). This may be some cause for confusion when local governments operate under zoning or parcel or land use designation. For DNR, forestland is independent on size or location. If the landowner comes to DNR with an application for a non-conversion activity, we would approve it based on if it meets FP rules and independent of what we know or don't know about county rule.

The 'PROVIDED' clauses under RCW 76.09.240 were added with the passage of the GMA to acknowledge a way for counties to protect important resources and assume jurisdiction over forest activities within the UGA and/or conversion activities outside the UGA. The transfer of jurisdiction process outlined in statute gives counties direct control over land use decisions and management of CAOs. This confusion is lessened for those counties who were required to adopt or have elected to do so. This is my pitch for encouraging Skagit to take this on.

**See my comments on the question below and my comments on the attached document you provided.**

We can discuss this further if need be. I appreciate your inquiry and the goal to arrive at a common understanding.

Marc

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**Marc Ratcliff**

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**From:** KirkJohnson [mailto:kirkj@co.skagit.wa.us]  
**Sent:** Monday, August 01, 2016 4:43 PM  
**To:** RATCLIFF, MARC (DNR) <MARC.RATCLIFF@dnr.wa.gov>  
**Subject:** County and DNR review of forested land

Marc,

Thanks for your time on the phone.

Attached are my notes from discussing our permitting practices with our critical areas staff. I've included some margin comments for you on some items I'd like feedback on. Also attached are my two email exchanges with Josh Fleischmann from Whatcom County.

Below are two of his statements that interest me. First, I don't get the sense that DNR is "making that call" here in Skagit County; it seems like we are. And second, Whatcom seems to reflect a hands off approach to the portion of the parcel not being converted, whereas I get the sense we have a hands on approach.

As I said, I look forward to discussing these materials again by phone in the near future, and look forward to anything you have you can send me in the meantime. I already do have your (or DNR's PowerPoint presentation titled "Forest Practice Rules and the Urban Interface," which is very informative.

Thanks, Kirk

"How forestlands are regulated is determined by DNR. In the example you provided below (let's assume a 5-acre parcel that was completely forested, then 2 acres were cleared for conversion to a single family residence), the 2 acres would have required a land use permit from the county as well as a Class IV – General permit from DNR. Those 2 acres are clearly "converted" now and under the jurisdiction of the county. The remaining 3 acres would likely still be viewed by DNR as "forest land" and regulated by the forest practices rules. But again, DNR makes this call."

The statement that DNR views the non-converted area as possible forestland is true. If the landowner submits an FPA for the remaining 3 acres, then DNR would evaluate that based on if meets the definition of forestland and if the activity is on-going forestry. In some cases, due to the proximity of adjacent residences/ag land, DNR may determine that it does not meet forestland.

"Generally speaking, our approach is that the forested portion of the parcel would still be regulated by DNR through the state forest practice regulations. That said, since all situations are unique (parcel size, amount of parcel in forestry, contiguous ownership, how lot was created, etc.) we defer to DNR as to whether or not they claim jurisdiction. If they don't claim jurisdiction, we would implement our CAO over the forested portion as well."

If DNR makes the determination that the area is not forestland, then no DNR FPA is required. This occurs often around the state, but generally for small areas. At that point the landowner would follow any local government ordinances/rules.

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